



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 629 East Main Street, Richmond, Virginia 23219

Mailing address: P.O. Box 1105, Richmond, Virginia 23218

TDD (804) 698-4021

www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4000
1-800-592-5482

MINUTES STATE WATER CONTROL BOARD

December 4, 2008
House Room C
General Assembly Building
9th & Broad Streets
Richmond, Virginia

Board Members Present:

W. Shelton Miles, III, Chair
R. Michael McKenney
W. Jack Kiser
Robert H. Wayland, III

Komal K. Jain, Vice-Chair
Thomas D. C. Walker
John B. Thompson

Staff Present:

David K. Paylor, Director
Department of Environmental Quality

Cindy M. Berndt
Department of Environmental Quality

Attorney General's Office:

Alfred B. Albiston, Assistant Attorney General

- 1) The attached minutes summarize activities that took place at this Board Meeting.
- 2) The meeting was convened on December 4, 2008, at 9:35 a.m., recessed at 11:10 a.m., reconvened at 11:20 a.m., recessed at 12:05 p.m., reconvened at 1:00 p.m., recessed at 3:20 p.m., reconvened at 3:30 and adjourned at 4:40 p.m.

Approved Minute No. 1
Apr. 27, 2009



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 4, 2008

MINUTE NO. 1 – Recognition of Gerald Seeley

The Board recognized Mr. Gerald Seeley for his many years of service to the Commonwealth and congratulated him on this retirement.


Cindy M. Berndt



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

(703) 583-3800 Fax (703) 583-3801

www.deq.virginia.gov

David K. Paylor
Director

Thomas A. Faha
Regional Director

Preston Bryant
Secretary of Natural Resources

EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 4, 2008

Minute No. 2 -Reissuance of Virginia Pollution Discharge Elimination Permit (VPDES) Individual Permit No. VA0090743 – Zion Crossroads WWTP- Louisa County

DEQ staff made a presentation for the reissuance of the Virginia Pollutant Discharge Elimination System (VPDES) individual permit for Zion Crossroads Wastewater Treatment Plant, VPDES permit number VA0090743. The Zion Crossroads WWTP is a 0.1 million gallon per day wastewater treatment plant owned and operated by the Louisa County Water Authority. It currently serves residential and commercial connections in the Zion Crossroads area of Louisa County. Staff briefed the Board on the proposed permit and provided a summary of the comments received during the public hearing and comment periods and staff responses to comments.

Following the presentation, the Board asked questions, which were addressed by staff. After questions from the Board, the following individuals addressed the Board in the order presented:

Dick Sedgley (Attorney for AquaLaw representing the Louisa County Water Authority)
Fitzgerald Barnes (Member, Louisa County Board of Supervisors)
Amanda Welch (South Anna Monitoring Project)
Angelo LoMascolo (Resident of the Green Springs Historic District)
J. Robin Lepore (Senior Attorney, U.S. Department of the Interior, Office of the Solicitor)
Rex Murphy (Resident of the Green Springs Historic District)
Rochelle Garwood (Senior Planner for the Thomas Jefferson Planning District)
Tammy Belinsky (Attorney for the Environmental Law Group, PLLC)
Noel Harrison (National Park Service Cultural Resource Manager)

Staff then recommended that the Board reissue the permit as provided in their Board package and highlighted the following modifications from the permit which was published for public notice: The monitoring frequency for Total Suspended Solids should be changed to 5 days per week and the monitoring frequency for E. Coli at the 0.1 mgd design flow be changed to 2 days per week. The Total Phosphorus and TKN loadings for 0.311 mgd tier be corrected to 5.2 and 7.8 lbs/day, respectively, monthly average and 7.8 and 12 lbs/day, respectively, weekly average.

A motion was made to reissue the permit as presented by staff with the noted modifications.

Board Decision

The Board, based on the Board book material and presentations at the meeting, voted unanimously in favor of staff's recommendation.

Thomas A. Faha
Director, Northern Regional Office



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS DECEMBER 4, 2008 MEETING

MINUTE NO. 3 – Proposed Rulemaking to Amend Nutrient Waste Load Allocations for Merck and FWSA-Opequon STP in 9 VAC 25-720-50.C. (Water Quality Management Planning Regulation, Shenandoah-Potomac River Basin).

John Kennedy/DEQ Chesapeake Bay Program Manager made the staff presentation on proposed amendments to revise the total nitrogen (TN) and total phosphorus (TP) waste load allocations (WLAs) in 9 VAC 25-720, as requested by Merck and Frederick-Winchester Service Authority (FWSA) for their Opequon plant. Both facilities are significant dischargers in the Shenandoah-Potomac River Basin. Current WLAs in the WQMP Regulation for the facilities were adopted by the Board in September 2005.

BACKGROUND: Alan Pollock first briefed the Board on the status of all requests received to-date for amended nutrient WLAs in 9 VAC 25-720. The summary concluded with a statement that staff does not anticipate any additional petitions requesting higher allocations that would be approvable under the criteria used during the 2005 rulemaking process.

The issues applicable to the subject Merck and FWSA requests were then presented, including:

- Status of rulemaking process, steps completed and prior Board actions on the requests.
- Requested WLA increase amounts and basis for the requests.
- Publication of proposed amendments, public hearing, summary of significant comments received and agency response.
- Changes made to proposal since publication:
 - Revise the associated “footnote” for Merck’s nitrogen and phosphorus WLAs to clarify the potential for any further amendments as well as the scope and duration of a full-scale pilot project for nutrient reduction technology at the plant.
 - Recommend that amendments for FWSA-Opequon not be approved.

The Board then heard comments and presentations from several speakers that had been involved in the rulemaking process, first regarding FWSA’s request:

- 1) Jesse Moffett, FWSA Executive Director – highlighted FWSA’s nutrient discharge control actions to-date and requested equitable consideration and approval of the request for increased WLAs at the Opequon plant. Noted that the biological treatment basins are already sized for the higher design flow that is the basis for the requested amendments. Also noted that the requested amendment for total nitrogen is based on state-of-the-art treatment, which is more stringent than other Valley-region POTWs are required to achieve.
- 2) Chris Pomeroy, AquaLaw (FWSA legal counsel) – reviewed prior Board actions and approval process for WLAs adopted in 2005, as well as criteria for considering petitions for increased WLAs.

Noted that several citizen environmental groups had rescinded their earlier opposition to FWSA's petition and now supported the request.

- 3) Joe Tannery, Chesapeake Bay Foundation – raised the issue that the Shenandoah-Potomac basin is already “over-allocated” for total nitrogen and without offsets to the proposed load increases there could be no assurance that tidal water quality standards would be maintained in the watershed.

Several speakers then addressed the Merck request:

- 1) Barbara Wunder and Craig Kennedy, Merck Inc. – noted that Merck has spent significant funds to test the nutrient removal technology options. Stated that the concentration bases for the requested amendments are technologically achievable and represent the best available treatment for the plant. Merck needs “business certainty” regarding their nutrient WLAs and cannot run the risk of non-compliance. Unachievable compliance requirements might result in a decision to change operations at the Elkton facility with the possibility of production cuts or shifting product lines. Under questioning from the Board, several issues were discussed:
 - a. *When did Merck realize that the WLAs were unachievable and what were the expectations for alternate limits?* Answer: Merck realized the WLAs could not be met shortly after the original rulemaking became final. Merck thought the process allowed for continued opportunity for alternate limits to be proposed.
 - b. *Is reuse or land treatment an option?* Answer: Expect significant public opposition to spray irrigation; no protocol currently defined to test toxicity in a land application process (might take 5-10 years to produce). Estimate high costs to pump treated effluent across a stream to agricultural land. Technology does not exist to provide treatment suitable for groundwater recharge (which under State regulations does not qualify as “reclamation/reuse”).
 - c. *Under the proposed “footnote”, are the effluent levels the best that can be achieved?* Answer: Proposed concentrations are the best that can be expected, based on pilot study results and modeling of full scale conditions. If actual full scale results are better, Merck will return any unused waste load allocation.
 - d. *Is credit exchange a viable option?* Answer: Merck does not want to rely on others for their compliance obligations, and view credit availability in the Shenandoah-Potomac as very limited. (It was noted in the staff presentation that “offset” requirements only apply to new and expanding facilities, and Merck is neither. Additionally, the original process to assign nutrient allocations was intended to allow for a plant to meet its discharge limits at design flow using available technology without reliance on nutrient credit exchange.)
- 2) Ken Smith, VA Watermen's Association – Opposes amendments and noted degraded condition of Bay water quality and living resources which impacts those dependent on the fisheries for their livelihood.
- 3) Leon Szeptycki, UVa Env. Law & Conservation Clinic (Shen. Riverkeeper legal counsel) – Continue to oppose rulemaking, as Board decision on the proposed increases is premature without knowing resulting impacts on water quality standards. Riverkeeper's interest is more focused on local water quality and there is evidence that eutrophication is affecting conditions in the receiving stream. The Board chairman asked: *How would you improve the staff recommendation, short of denying it?* Answer: order development of the record to establish the proper effluent levels for Merck and rerun the Bay Water Quality Model to test if standards will be maintained.
- 4) Joe Tannery, Chesapeake Bay Foundation – Same general comments made regarding FWSA-Opequon also applied to Merck. If nutrient loads go up from one source, they must go down somewhere else. Noted that the Board's authority in 9 VAC25-720 to amend individual waste load

allocations must also ensure that water quality standards are maintained, and that hasn't been demonstrated yet in this case.

STAFF RECOMMENDATIONS and BOARD ACTION: Staff presented the following recommendations for Board consideration:

1. Approve amendments to the Water Quality Management Planning Regulation, 9 VAC 25-720-50.C, as proposed for Merck:

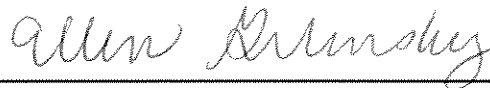
VA Water Body ID	VPDES	Total Nitrogen WLA (lbs/yr)	Total Phosphorus WLA (lbs/yr)
B37R	VA0002178	14,619 43,835	1,096 4,384

Notes: (11) Merck-Stonewall – waste load allocations will be reviewed and possibly reduced based on "full-scale" results showing the optimal treatment capability of the 4-stage Bardenpho technology at this facility, consistent with the level of effort by other dischargers in the region. The "full scale" evaluation will be completed by December 31, 2011 and the results submitted to DEQ.

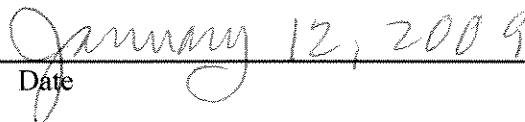
2. Disapprove the requested amendments to nutrient WLAs for the FWSA-Opequon facility in the Water Quality Management Planning Regulation, 9 VAC 25-720-50.C.
3. Direct the staff to ensure that the combined nutrient allocations for point sources and nonpoint sources in the Shenandoah-Potomac basin do not exceed the basin loading caps established under the Federal-interstate Total Maximum Daily Load Program that are necessary to achieve water quality standards.

The Board then took the following actions:

- Voted to adopt recommendations #2 and #3, both by a vote of 6 to 1.
- Twice a motion was made to adopt recommendation #1, and both times failed for lack of a second.
- A motion was made to defer recommendation #1 until the next regularly scheduled Board meeting, with a suggestion for a considered discussion between staff and Merck that would give an alternative to the effluent numbers presented today and allow the Board to consider what the numbers should be after the full scale study. This motion passed by a vote of 5 to 2.



Ellen Gilinsky, PhD
Director, Water Division


Date



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 4, 2008

MINUTE NO. 4 - General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Non-Metallic Mineral Mining, 9 VAC 25- 190

The staff recommended that the board authorize a notice of public comment period and public hearings on the draft general VPDES permit for non-metallic mineral mining that was presented in the board meeting package. The staff also recommended that the board authorize the staff to serve as hearing officer at the public hearings.

Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously to authorize a notice of public comment period and to hold public hearings for the draft General VPDES Permit Regulation for non-metallic mineral mining. The Board also voted unanimously to authorize the staff to serve as hearing officer at the public hearings.

A handwritten signature in cursive script, reading "Ellen Gilinsky".

Ellen Gilinsky, Ph.D.
Director, Water Division



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MINUTE NO. 5 – Report on Facilities in Significant Noncompliance

Kathleen O'Connell, Water Enforcement Program Manager, reported to the Board that there were no regulated parties to be reported as being in significant noncompliance for the quarter ending June 30, 2008.

The Board accepted the report.

A handwritten signature in cursive script, reading "Kathleen F. O'Connell".

Kathleen F. O'Connell
Water Enforcement Program Manager
Division of Enforcement



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 4, 2008

MINUTE NO. 6 – VPDES Consent Special Orders

Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the Consent Special Orders for:

1. Motion Control Industries, Inc.
2. Concrete Precast Systems, Inc.

The Board unanimously approved the Orders and further authorized the Department's Director to execute the Orders on the Board's behalf and to refer violations of the Orders to the Office of the Attorney General for appropriate legal action.

A handwritten signature in cursive script, reading "Kathleen F. O'Connell".

Kathleen F. O'Connell
Water Enforcement Program Manager
Division of Enforcement



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MINUTE NO. 7 – VPA Consent Special Orders

Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the Consent Special Order for Houff's Feed and Fertilizer Co., Inc.

The Board unanimously approved the Order and further authorized the Department's Director to execute the Order on the Board's behalf and to refer violations of the Order to the Office of the Attorney General for appropriate legal action.

A handwritten signature in cursive script, reading "Kathleen F. O'Connell", written over a horizontal line.

Kathleen F. O'Connell
Water Enforcement Program Manager
Division of Enforcement



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 4, 2008

MINUTE NO. 8 – VWP (and Others) Consent Special Orders

Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the Consent Special Orders for:

1. HHHunt Corporation
2. Fry's Spring Beach Club, Incorporated
3. Rockbridge Farmers Cooperative, Incorporated

The Board unanimously approved the Orders and further authorized the Department's Director to execute the Orders on the Board's behalf and to refer violations of the Orders to the Office of the Attorney General for appropriate legal action.

A handwritten signature in cursive script, reading "Kathleen F. O'Connell".

Kathleen F. O'Connell
Water Enforcement Program Manager
Division of Enforcement



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MINUTE NO. 9 – Oil Consent Special Orders

Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the Consent Special Orders for:

1. JIM, Inc.
2. Jesse Allen Wright

The Board unanimously approved the Orders and further authorized the Department's Director to execute the Orders on the Board's behalf and to refer violations of the Orders to the Office of the Attorney General for appropriate legal action.

A handwritten signature in black ink, appearing to read "Kathleen F. O'Connell".

Kathleen F. O'Connell
Water Enforcement Program Manager
Division of Enforcement



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 4, 2008

MINUTE NO. 10 – VPDES Consent Special Order for Chesapeake Marine Terminals

Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the Consent Special Order for Chesapeake Marine Terminals, Inc.. Ms. O'Connell informed the Board that, since the Board originally received a copy of the Order for review, a schedule requirement of the Order's Appendix had been amended. The Board received a copy of the amended Appendix for review prior to taking action on the Order.

The Board unanimously approved the Order and further authorized the Department's Director to execute the Order on the Board's behalf and to refer violations of the Order to the Office of the Attorney General for appropriate legal action.

A handwritten signature in cursive script, reading "Kathleen F. O'Connell".

Kathleen F. O'Connell
Water Enforcement Program Manager
Division of Enforcement



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 4, 2008

MINUTE NO. 11 – VPDES Consent Special Order for the Town of Lovettsville

Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the Consent Special Order for the Town of Lovettsville. Ms. O'Connell then informed the Board that the Town Mayor wished to address the Board on the subject of the Order. The Board received the Mayor's comments and after some discussion voted 6 to 1 to approve the Order, to authorize the Department's Director to execute the Order on the Board's behalf and to authorize the Department's Director to refer violations of the Order to the Office of the Attorney General for appropriate legal action.

A handwritten signature in cursive script, reading "Kathleen F. O'Connell".

Kathleen F. O'Connell
Water Enforcement Program Manager
Division of Enforcement



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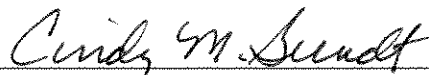
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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 4, 2008

MINUTE NO. 12 – Election of Officers

The Board elected Rev. W. Shelton Miles, III Chairman (Rev. Miles abstained) and elected Ms. Komal K. Jain Vice-Chair (Ms. Jain abstained).


Cindy M. Berndt



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 4, 2008

MINUTE 13 – FY 2009 VCWRLF Loan Authorizations

Mr. Walter Gills, Program Manager of the Department's Construction Assistance Program, made a presentation to the Board based on a memorandum dated November 25, 2008. The memorandum identified the staff's recommended loan amounts, terms, and interest rates for 24 projects recommended for FY 2009 Virginia Clean Water Revolving Loan Fund assistance.

Mr. Gills began his presentation by summarizing the actions taken by the Board at its October 2008 meeting, of targeting 24 projects for FY 2009 assistance and directing the staff to present the Board's tentative list for public comment. He relayed that a public meeting was held on November 20, 2008 and that no comments had been received. Mr. Gills explained that he had met with all the potential FY 2009 loan recipients to verify the financial data used to evaluate the local impact and that the staff had completed its user charge impact analyses for the targeted recipients.

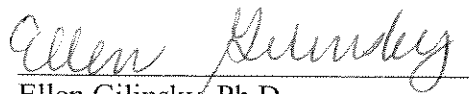
Based on the initial meetings with the applicants, the staff recommended two modifications to the previously-approved funding list. The Town of Luray had requested that their loan request be reduced to \$15,025,619 based on a slightly reduced scope of work and Stafford County requested a \$3.5 million increase to their Aquia WWTP upgrade application to be used towards the purchase of Crows Nest Phase II. Mr. Gills indicated that the staff supported both requests. These changes resulted in a revised total loan amount of \$260,697,796 for the 24 projects.

Mr. Gills explained that program policy calls for the program's ceiling rate to be set at 1% below the municipal revenue bond market. Since the program will have to leverage this year and sell bonds to fund these projects, the staff recommended that the FY 2009 ceiling rate not be set until after those bonds are sold in the spring.

Board Decision: After brief discussion, the Board voted unanimously to authorize the execution of the 24 loans at the amounts, rates, and terms listed below. Loan closings are subject to the receipt of favorable financial capability analysis reports and supporting recommendations from VRA. In addition, the Board agreed that the ceiling rate would be set at 1% below the all inclusive true interest cost on the leverage bonds once they are sold.

	Locality	Loan Amount	Rates & Loan Terms
1	City of Waynesboro	\$15,025,619	0%, 20 years
2	City of Lynchburg	\$14,000,000	0%, 30 years
3	Frederick-Winchester Service Auth.	\$20,535,000	C, 20 years
4	City of Richmond	\$10,000,000	0%, 20 years
5	City of Galax	\$1,408,000	0%, 20 years
6	HRSD James River	\$10,000,000	C, 20 years
7	HRSD Nansemond	\$23,619,220	C, 20 years
8	Alexandria Sanitation Authority	\$3,500,000	C, 20 years
9	City of Norfolk	\$7,500,000	0%, 20 years
10	Arlington County	\$35,000,000	C, 20 years
11	Stafford County	\$27,663,010	C*, 20 years
12	Rivanna Water and Sewer Authority	\$20,000,000	C, 20 years
13	Augusta County Service Authority	\$10,345,526	C, 20 years
14	City of Falls Church	\$4,100,000	C, 20 years
15	HRSD Interceptor Metering	\$24,237,250	C, 20 years
16	City of Salem	\$7,488,600	C, 20 years
17	Town of Berryville	\$8,000,000	0%, 20 years
18	Alleghany County	\$4,518,316	0%, 20 years
19	Town of Elkton	\$3,490,000	0%, 20 years
20	City of Norton	\$1,514,370	0%, 20 years
21	Nelson County Service Authority	\$52,885	0%, 20 years
22	Town of Lovettsville	\$2,500,000	C, 20 years
23	City of Newport News	\$5,200,000	C, 20 years
24	BET Salem Venture	\$1,000,000	1%, 10 years
Total Request		\$260,697,796	C= Ceiling Rate

* Interest Rate will be reduced by approximately 1.5% when Crows Nest purchase occurs


Ellen Gilinsky, Ph.D.
Director
Water Division



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS DECEMBER 4, 2008 MEETING

MINUTE NO. 14 -

Ellen Gilinsky, Water Division Director, gave the Board an update and progress report on two developments. We have received approval to go to public comment with the revisions to the water quality standards regulation concerning aquaculture protection zones; a public hearing will be held on January 28th on the Eastern Shore with Mr. Wayland presiding. We hope to return to the Board by the June 2009 meeting with a final regulation.

A handwritten signature in cursive script that reads "Ellen Gilinsky".

Ellen Gilinsky, PhD
Director, Water Division

A handwritten date in cursive script that reads "Jan 12, 2009".

Date



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Street address: 629 East Main Street, Richmond, Virginia 23219

Mailing address: P.O. Box 1105, Richmond, Virginia 23218

TDD (804) 698-4021

www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4000
1-800-592-5482

EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON DECEMBER 4, 2008

MINUTE NO. 15 – National Rivers and Streams Assessment Report

The Board received a report from Mr. Lawrence Willis on the National Rivers and Streams Assessment and Virginia's Probabilistic Monitoring Program.


Cindy M. Berndt



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MINUTE NO. 17 – Petition for Rulemaking

Mr. Rick Weeks, Chief Deputy, presented a petition for rulemaking from Mr. Pete Terry. Mr. Weeks informed the Board that the petition requested that the Board initiate a rulemaking to prevent the future actual and potential impairment of state waters as the result of large scale agricultural operations. Mr. Weeks advised the Board that the Department would publish a notice that the Board had received the petition, seek comment on whether to initiate a rulemaking and report back to the Board at a future meeting.


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MINUTE NO. 16 – Future Meetings

A date for the next meeting was not set.


Cindy M. Berndt